

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Petition of AT&T Services, Inc. For)	WC Docket No. 16-363
Forbearance Under 47 U.S.C § 160(c))	
From Enforcement of Certain Rules For)	
Switched Access Services and Toll Free)	
Database Dip Charges)	

REPLY COMMENTS OF INCOMPAS

Angie Kronenberg
Christopher L. Shipley
INCOMPAS
1200 G Street NW
Suite 350
Washington, D.C. 20005
(202) 872-5745

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TABLE OF COMMENTS

I.	INTRODUCTION & SUMMARY.....	1
II.	AT&T'S PETITION WILL DISRUPT COMPETITION.....	2
III.	AT&T'S REQUEST TO FORBEAR FROM 8YY DATABASE QUERY RULES THREATENS COMPETITIVE CARRIERS ABILITY TO GET PAID FOR DATABASE DIPS PROVIDED.....	7
IV.	CONCLUSION.....	8

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INCOMPAS, by its undersigned counsel, submits these reply comments in response to the Federal Communications Commission’s Public Notice¹ seeking comments on AT&T Services, Inc.’s (“AT&T”) Petition for Forbearance (“Petition”) from (1) tariffing requirements for tandem switching and tandem-switched transport access charges on calls to or from local exchange carriers (“LECs”), and (2) rules that permit charges for toll-free database queries.² For the reasons described herein, INCOMPAS opposes the Petition and urges the Commission to dismiss or deny AT&T’s request for forbearance.

I. INTRODUCTION & SUMMARY

The record filed in the wake of this request shows near unanimous opposition to AT&T’s petition.³ As the preeminent national industry association for providers of Internet and

¹ *Pleading Cycle Established For Comments on AT&T’s Petition For Forbearance From Certain Tariffing Rules*, Public Notice, WC Docket No. 16-363 (Nov. 2, 2016) (“Public Notice”).

² Petition of AT&T Services, Inc. For Forbearance Under 47 U.S.C. § 160(c) From Enforcement Of Certain Rules For Switched Access Services And Toll Free Database Dip Charges, WC Docket No. 16-363 (filed Sep. 30, 2016) (“Petition”).

³ Verizon, a similarly situated interexchange carrier, is the only filer to call on the Commission to grant the Petition. *See* Comments of Verizon, WC Docket No. 16-363 (filed Dec. 2, 2016).

competitive communications networks services, INCOMPAS shares many of the same procedural and competitive concerns expressed by other commenters. In its Reply Comments, INCOMPAS examines the competitive issues for intermediate carriers that arise from AT&T's forbearance request and identifies a number of regulatory alternatives that would allow AT&T to seek—on a case-by-case basis—redress of the issues it raises in its Petition by the Commission without disrupting the Commission's intercarrier compensation regime.

II. AT&T'S PETITION WILL DISRUPT COMPETITION.

AT&T's request for forbearance from tariffing requirements for tandem switching and tandem-switched transport access charges on calls to or from LECs should be rejected. This forbearance, if granted, has the potential to harm competition in the competitive tandem switching and tandem-switched transport marketplace. AT&T's petition is overly broad and raises numerous competitive and procedural concerns. There is almost unanimous and significant opposition to AT&T's forbearance petition.

Under 47 U.S.C. § 160, the Commission is allowed to forbear “from applying any regulation or any provisions of this chapter” based on the determination that “(1) enforcement of such regulation or provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in connection with that telecommunications carrier or telecommunications service are just and reasonable and are not unjustly or unreasonably discriminatory; (2) enforcement of such regulation or provision is not necessary for the protection of consumers; and (3) forbearance from applying such provision or regulation is consistent with the public interest.”⁴ With respect to the determination of whether or not

⁴ 47 U.S.C. § 160(a)(1)-(3).

forbearance is in the public interest under 47 U.S.C. § 160(a)(3), the Commission must consider whether forbearance “will promote competitive market conditions, including the extent to which such forbearance will enhance competition among providers of telecommunications services.”⁵

In that regard, AT&T’s Petition could upset a carefully calibrated compensation regime and cripple the ability of competitive providers to recuperate costs associated with their networks.

Perhaps the most alarming aspect of the Petition is the scope of carriers from whom AT&T seeks forbearance. While AT&T attempts to characterize its proposal as a response to access stimulation, AT&T seeks to apply forbearance to all LECs,⁶ which would “detariff tandem and transport rates charged by intermediate tandem providers serving the end office LECs engaged in access stimulation.”⁷ AT&T’s attempt to prohibit all LECs from billing pursuant to a tariff for transport and tandem access charges is an overly broad application of the forbearance process, particularly in light of the fact that the Petition raises issues with a few carriers in a couple of states and even then, provides insufficient evidentiary support. As noted by NTCA—The Rural Broadband Association, the request threatens to “capture carriers that are not involved directly in alleged access stimulation” and increase the number of carriers from whose tariffs AT&T can claim forbearance.⁸ O1 Communications points out that this treatment

⁵ 47 U.S.C. § 160(b).

⁶ Petition at 15 n.21.

⁷ Peerless Networks, Inc.’s Opposition To AT&T Services, Inc.’s Petition For Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363 (filed Dec. 2, 2016), at 5.

⁸ Comments of NTCA—The Rural Broadband Association, WC Docket No. 16-363 (filed Dec. 2, 2016), at 14-15 (“NTCA Comments”).

of intermediate carriers would lead to a series of practical questions—such as “Who determines which LECs fall into that category?”—that are not addressable in a forbearance proceeding.⁹

If forbearance is granted, these questions will remain and we should reasonably expect that IXC’s would engage in more self-help refusals to pay all or portions of their access bills and to increase their claims that LECs participate in access stimulation, whether they do so knowingly or not.¹⁰ WTA—Advocates for Rural Broadband and Eastern Rural Telecom Association note that it is “common practice” for IXC’s to charge that LECs are participating in access stimulation “to force small RLECs and CLECs into drawn out and expensive lawsuits . . . that frequently result in ‘settlements’ wherein the smaller LECs receive only cents on the dollar [for] their access bills.”¹¹

AT&T’s Petition also has the potential to harm consumers by unduly driving up competitors’ costs. In particular, forbearance would result in imposing significant administrative and transaction costs on LECs and tandem providers while simultaneously hindering their ability to collect access charges from IXC’s. The Petition seeks to prohibit LECs, including intermediate carriers “that may not have direct contractual arrangements with a provider of free calling services,” from tariffing tandem or transport charges “for any traffic routed to or from a LEC

⁹ See O1 Communications, Inc.’s Opposition To Petition of AT&T Services, Inc. For Forbearance Under 47 U.S.C. § 160(c), WC Docket No. 16-363 (filed Dec. 2, 2016), at 8 (“O1 Comments”).

¹⁰ Indeed, AT&T is already engaging in self-help and the refusal to interconnect. See e.g., Consolidated Communications Companies and West Telecom Services, LLC’s Motion For Summary Denial Of and Opposition To AT&T’s Petition, WC Docket No. 16-363 (filed Dec. 2, 2016), at 22 (“Consolidated and West Motion and Opposition”) (discussing how IXC’s, including AT&T, engage in self-help by refusing to pay any amount for the switched access charges under dispute, requiring switched access providers to seek payment through collection actions).

¹¹ Opposition of WTA—Advocates For Rural Broadband and Eastern Rural Telecom Association, WC Docket No. 16-363 (filed Dec. 2, 2016), at 6.

engaged in access stimulation.”¹² AT&T’s proposal flips the burden onto intermediate carriers to identify whether or not their networks are being used to engage in access stimulation. In its comments, CenturyLink notes that providers do not have “the capability of identifying and carving out for special treatment traffic that is bound for CLECs engaged in access stimulation” and would need to create the systems and processes necessary to capture this information at “significant costs.”¹³ Intermediate carriers that are unable to determine whether or not traffic originates or terminates from an LEC engaged in access stimulation risk IXCs making “unilateral determinations . . . as to when and to whom forbearance applies.”¹⁴ In that situation, an intermediate carrier would likely have tremendous difficulty getting an IXC to pay anything for the intermediate switched access services provided,¹⁵ and “the IXCs receive a windfall.”¹⁶ Consequently, the AT&T Petition does not offer an alternative mechanism for RLECs and CLECs to ensure that they get paid for legitimate services provided, which could significantly threaten their ability to compete and/or will result in higher costs for consumers who are not the cost causers.

¹² Petition at 15 n.21.

¹³ CenturyLink Opposition/Comments To AT&T Forbearance Petition, WC Docket No. 16-363 (filed Dec. 2, 2016), at 5.

¹⁴ O1 Comments at 12-13 (suggesting that allowing IXCs to determine how forbearance should be applied harms the public interest and consumer good by damaging the competitive marketplace).

¹⁵ See Consolidated and West Motion and Opposition at 22 (explaining that “IXCs would attempt to use the absence of a tariff to avoid payment altogether”).

¹⁶ Motion For Summary Denial and Opposition To AT&T’s Petition of Birch Communications, Inc.; BTC, Inc.; Cbeyond Communications, LLC; Goldfield Access Network, LLC; Kansas Fiber Network, LLC; Louisa Communications; Nex-Tech, Inc.; and Peninsula Fiber Network, LLC, WC Docket No. 16-363 (filed Dec. 2, 2016), at 22.

Furthermore, the comments to the Petition indicate that tariffs still play an important role with respect to the tandem switching and tandem-switched transport access charges of carriers despite the limited impact that access stimulation has on IXC's. Primarily, the tariff process eliminates the administrative burden on competitive providers of constantly negotiating rates for access charges with incumbent IXC's. Also, Consolidated Communications Companies and West Telecom note that tariffing rules "provide a level playing field for competitive providers of tandem-switching and tandem-switching transport."¹⁷ Because AT&T's request for forbearance would not promote competitive market conditions or enhance competition among providers of telecommunications services, it is inconsistent with the public interest and the Commission's test for forbearance.

To the extent that AT&T seeks to curb the practices of particular carriers engaging in traffic pumping, it may avail itself of relief through more appropriately tailored, and already available means. First, the Commission has an established tariff review process, and in this context, AT&T can request the Commission investigate whether the tariffs by alleged traffic pumpers are just and reasonable pursuant to the protections Title II affords. Second, AT&T could avail itself of the Section 208 complaint process, which provides that challenges can be brought against common carriers for the contravention of provisions of the Commission's rules. Either of these regulatory solutions is preferable to AT&T's attempts to secure broad forbearance that will disrupt the competitive marketplace for tandem and transit services.

¹⁷ Consolidated and West Motion and Opposition at 5 (arguing that the effect of tariffs on the competitive marketplace indicates that forbearance is not justified).

III. AT&T’S REQUEST TO FORBEAR FROM 8YY DATABASE QUERY RULES THREATENS COMPETITIVE CARRIERS ABILITY TO GET PAID FOR DATABASE DIPS PROVIDED.

INCOMPAS also opposes AT&T’s request to forbear from rules that permit LECs to assess per query database dip charges on toll-free calls. As its sole support for the contention that all tariffed toll-free dip charges should be abolished, AT&T provided a single footnote detailing tariffed charges of four LECs, implying that they are bad actors that are representative of an unreasonable rate variance throughout the industry.¹⁸ As Windstream highlights in its comments AT&T admits that toll-free database queries are legitimate charges for “an actual expense incurred by LECs.”¹⁹ The key question before the Commission, therefore, is not whether any such charges are just and reasonable, but instead whether the level of the tariffed rates is appropriate. This issue is better addressed by the Commission’s tariff investigation process.

AT&T’s request would create marketplace inefficiencies and potentially threaten completion of 8YY calls. In joint comments, Inteliquent, Bandwidth, and Onvoy note that requiring carriers to negotiate individual rates and terms with IXC’s due to complete forbearance could “impose[] possibly severe transaction costs” and that failure to negotiate an arrangement with IXC’s “would increase the risk that an LEC would be forced to provide free service to an

¹⁸ Petition at 19 n.29. Even if we were to assume that the four LEC’s tariffed charges identified in AT&T’s footnote 29 are representative of the industry as a whole, INCOMPAS agrees with NTCA that rate variability alone does not justify a flash-cut to a zero rate. NTCA Comments at 19.

¹⁹ Comments of Windstream Services, LLC on AT&T Petition for Forbearance, WC Docket No. 16-363 (filed Dec. 2, 2016), at 1.

IXC that refuses to negotiate.”²⁰ However, if providers of 8YY database dips are not paid and otherwise experience issues getting paid for the dips provided, some competitive carriers may have no choice but to exit the 8YY call-completion market, which is contrary to 160(b) requirement that forbearance “promote competitive market conditions.” INCOMPAS therefore urges the Commission to reject AT&T’s proposal, which could effectively degrade the reliability of the nation’s telecommunications networks.

IV. CONCLUSION

The record reflects that AT&T’s request for forbearance is overly broad and does not contain the evidence necessary to conclude that forbearance would be in the public interest. Based on the concerns and objections raised by multiple competitive carriers and other parties, and given the alternative procedural opportunities available to AT&T, INCOMPAS urges the Commission to deny the forbearance request.

Respectfully submitted,

INCOMPAS

/s/ Christopher L. Shipley

Angie Kronenberg
Christopher L. Shipley
INCOMPAS
1200 G Street NW
Suite 350
Washington, D.C. 20005
(202) 872-5745

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²⁰ Comments of Inteliquent, Inc., Bandwidth.com, Inc. and Onvoy, LLC, WC Docket No. 16-363 (filed Dec. 2, 2016), at 4.